

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PETER C. ALFANO, III and
CRISTA S. ALFANO,

Plaintiffs,

v.

CIVIL NO. 2:22-CV-21
(KLEEH)

SHOWSHOE MOUNTAIN, INC.,

Defendant.

ORDER ADOPTING AMENDED REPORT AND RECOMMENDATION [ECF NO. 22],
GRANTING MOTION TO DISMISS [ECF NO. 10], DISMISSING COUNTS ONE
THROUGH SIX WITH PREJUDICE, AND REFERRING CASE

On December 12, 2022, the pro se Plaintiffs, Peter C. Alfano, III and Crista S. Alfano (together, "Plaintiffs"), filed a Complaint against the Defendant, Snowshoe Mountain, Inc. ("Defendant"). Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review. Defendant filed a motion to dismiss on February 13, 2023 [ECF No. 10]. On May 19, 2023, the Magistrate Judge entered an Amended Report and Recommendation ("R&R"), recommending that the Court dismiss Counts One through Six of the Complaint with prejudice.

The R&R informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such

ALFANO V. SNOWSHOE

2:22-CV-21

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objection.” It further warned them that the “[f]ailure to timely file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals.” Plaintiffs accepted service of the R&R on May 22, 2023. To date, no objections have been filed.

When reviewing a magistrate judge’s R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, “the Court may adopt, without explanation, any of the magistrate judge’s recommendations” to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603–04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R in its entirety [ECF No. 22]. Defendant’s motion to dismiss is **GRANTED** [ECF No. 10]. Counts One through Six of the Complaint are hereby **DISMISSED WITH PREJUDICE** for the reasons stated in the R&R.

ALFANO V. SNOWSHOE

2:22-CV-21

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Pursuant to 28 U.S.C. § 636 and the Local Rules, the Court again **REFERS** this matter to the Honorable Michael J. Aloï, United States Magistrate Judge, to conduct a scheduling conference and issue a scheduling order, for written orders or reports and recommendations, as the case may be, regarding any motions filed, and to dispose of any other matters that may arise.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record; to the pro se Plaintiffs via certified mail, return receipt requested; and to the Honorable Michael J. Aloï, United States Magistrate Judge.

DATED: June 12, 2023



THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA